

United States Court of Appeals For the First Circuit

No. 19-1149

OPTUM, INC.; OPTUM SERVICES, INC.,

Plaintiffs, Appellees,

v.

DAVID WILLIAM SMITH,

Defendant, Appellant.

Before

Howard, Chief Judge,
Torruella and Kayatta, Circuit Judges.

ORDER OF COURT

Entered: February 15, 2019

Upon motion by plaintiff-appellees, the district court entered an indicative ruling pursuant to Fed. R. Civ. P. 62.1. The district court ruled that a motion for temporary restraining order ("TRO") filed by plaintiff-appellees presented a "substantial issue" but that the filing of a notice of appeal by defendant-appellant meant that the district court could not exercise jurisdiction to adjudicate the motion for TRO. Having already unsuccessfully sought similar relief from the district court, plaintiff-appellees have filed an urgent motion with this court seeking injunctive relief pursuant to Fed. R. App. P. 8. That request is denied without prejudice, but we conclude that remand pursuant to Fed. R. App. P. 12.1 would be prudent in light of the district court's indicative ruling and in light of the proceedings already conducted by the district court regarding the motion for TRO. The matter is remanded to the district court for the limited purpose of resolving the pending motion for TRO as expeditiously as possible. We express no opinion at this time as to the gating question whether the request for TRO must be arbitrated, a question the district court has answered in the negative, or as to the merits of the motion for TRO. The stay of proceedings previously imposed by the district court is dissolved to the extent necessary for the district court to adjudicate the motion for TRO. Pursuant to Rule 12.1, "the parties must promptly notify the circuit clerk when the district court has decided the motion on remand." We will retain jurisdiction over the appeal for the moment without expressing any opinion at this time as to whether appellate jurisdiction properly lies. That issue is reserved.

By the Court:

Maria R. Hamilton, Clerk

cc:

Laura McLane

John F. Welsh

Brian Mead

Michael J. Sheehan

Justin L. Engel

Russell Beck

Stephen D. Riden

Sarah Elaine Harrington

Thomas C. Goldstein

Hannah Tso Joseph

Jeffrey J. Pyle

Honorable Mark L. Wolf

Robert M. Farrell, Clerk (D. Mass)